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Human resources management

Internal vacancies in the Secretariat

Note by the Secretary-General

Summary

A recent judgement of the United Nations Administrative Tribunal has called into question the validity of the distinction between internal and external candidates and the possibility of limiting internal vacancies to staff previously recruited under the system of desirable ranges through competitive examinations or after review by the appointment and promotion bodies. The judgement makes it extremely difficult for the Secretariat to comply with a number of General Assembly resolutions relating to the competitive examination system, the eligibility of a limited category of staff to apply for internal vacancies after one year of qualifying service and the system of desirable ranges. The judgement would also require an additional layer in the appointment and promotion process and would have a serious impact on career development of staff.

This note sets out options for legislative action, including an amendment to staff regulation 4.4.

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Introduction

1. For many years, the Secretariat has considered that, for purposes of placement and promotion of staff whose appointment is subject to the system of desirable ranges, vacant posts circulated through an internal vacancy announcement were "internal vacancies" normally open to "internal candidates" only. "Internal candidates" were staff members who had previously been recruited under the system of desirable ranges, through the mechanisms established under the 100 series of the Staff Rules for appointments of one year or longer, that is, by competitive examination or a review by the appointment and promotion bodies. The system has been applied in a flexible manner, taking into account the legitimate career aspirations of staff as well as the changing needs of the Organization. Thus, it has been determined that external circulation of vacancies for posts at the P-5 level and above is in the interest of the Organization as it broadens the pool of candidates with the necessary qualifications at those levels and is a valuable tool in reaching the goal of gender equality.

2. As a result, candidates who have already gone through a rigorous screening process at the time of initial recruitment and have satisfied the requirements of equitable geographical distribution and gender balance can be reviewed and compared on their respective merits under a simplified selection process. This creates valuable career progression opportunities for qualified internal candidates, on the clear understanding that if no internal candidate can be identified who meets the technical and professional requirements of the vacant post in a manner consistent with the highest standards of efficiency, competence and integrity under Article 101, paragraph 3, of the Charter of the United Nations, an external vacancy announcement will be issued to invite all interested candidates to apply for the post.

3. The practice described above came into being after the General Assembly adopted the Staff Regulations of the United Nations, specifically staff regulation 4.4, on 2 February 1952.[1] It is only subsequently that a formal distinction was made among various categories of staff who would be governed by different series of the Staff Rules. This was the case for technical cooperation experts, referred to as "project personnel", for whom the 200 series of the Staff Rules was issued in 1954.[2] Similarly, the 300 series of the Staff Rules was issued originally for short-term appointees and was extended in 1994 to include appointments of limited duration.[3] Despite the absence of reference to "internal vacancies" or "internal candidates" in the Staff Regulations themselves, it is noted that the General Assembly used the expression "internal vacancies" in paragraph 27 of section III.B of its resolution 51/226 of 3 April 1997, and in paragraph 2 of section V of its resolution 52/219 of 22 December 1997.

4. On 25 November 1997, the United Nations Administrative Tribunal rendered judgement No. 852, *Balogun* (1997) (AT/DEC/852), which was communicated to the Secretary-General on 19 February 1998. In that judgement, the Tribunal ordered the Secretary-General to allow the applicant, who had been recruited under the 200 series of the Staff Rules governing project personnel, "to submit his candidacy for any internal vacancies for which he is qualified and for which he applies". A summary of the judgement is provided in annex I to the present report.

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[1] Resolution 590 (VI). The Staff Regulations, as adopted by the General Assembly, were promulgated in ST/AFS/SGB/81/Rev.6 of 27 February 1952 and became effective as from 1 March 1952.

[2] ST/AFS/SGB/94/Add.3 of 1 January 1954.

[3] ST/SGB/Staff Rules/3/Rev.1.

5. The reasoning used by the Tribunal goes far beyond the individual case it was considering. The judgement repeatedly refers to persons recruited under the 200 series of the Staff Rules, who could rely on the Tribunal's language to support the claim that they are eligible to apply for internal vacancies intended for 100 series staff members. Moreover, the Tribunal's reasoning is based on staff regulation 4.4, applicable to all staff who are "already in the service of the United Nations", an expression which the Tribunal interpreted to mean staff "who are employed in the exclusive service of the Organization, who have taken an oath to the Organization and whose Letters of Appointment oblige them to abide by the terms and conditions of the Staff Regulations and Rules" (para. III of the judgement, reproduced in annex I). This definition would include not only all 200 series project personnel, but also all staff recruited under the 300 series of the Staff Rules on a short-term appointment or an appointment of limited duration, as well as all staff recruited under the 100 series of the Staff Rules outside the competitive examination system or without a review by the appointment and promotion bodies, as is the case for mission staff serving at established missions and staff appointed for less than one year.

6. As it now stands, the judgement makes it extremely difficult, if not impossible, for the Secretariat to comply with a number of General Assembly resolutions. Moreover, the system envisaged by the Tribunal to carry out in practice its interpretation of staff regulation 4.4 would require a whole new layer in the placement and promotion process, as well as a radical change in the role of the appointment and promotion bodies, which, in the Tribunal's view, would have to assume substantive functions now exercised by programme managers. Overall, the judgement would also have a serious impact on career development, especially for junior staff. In view of these fundamental concerns, application of the judgement has been limited, for the time being, to the individual applicant who had brought the case, pending consideration of the issues involved by the General Assembly.

Issues related to the competitive examination system

7. The competitive examination system could be rendered meaningless if the judgement was read to mean that any staff member holding a Letter of Appointment under the 200 series or under any series of the Staff Rules could apply for P-2 and P-3 vacancies. This would be inconsistent with several General Assembly resolutions, including paragraph 15 of section III.B of resolution 51/226, which reaffirmed the policy that appointment to P-1 and P-2 posts and to posts requiring special language competence shall be made exclusively through competitive examinations and that appointment to posts at the P-3 level shall normally be made through competitive examinations. This would also preclude full implementation of the measures taken to implement paragraph 16 of the same resolution which requested that special attention should be paid to the prospects of staff for promotion to the P-3 level.

8. In the judgement, the Tribunal remarked that 100 series appointments were, for posts above the P-3 level, open to external candidates who have not passed any kind of competitive examination (para. VII of the judgement, reproduced in annex I). This has been taken as an acknowledgement of the established policy of the Organization that posts at the P-2 and, normally, at the P-3 levels are filled by candidates who have passed a competitive examination. Accordingly, the Secretariat has continued to apply the rules implementing existing resolutions on the subject. Nevertheless, this interpretation remains subject to challenge and could be invalidated by the Tribunal in the future unless the General Assembly clarifies the matter.

Issues related to the General Assembly's requirement that a well-defined category of staff, excluding 200 series project personnel, have one year of qualifying service before becoming eligible to apply for internal vacancies

9. Paragraph 27 of section III.B of resolution 51/226 requires that persons serving in peacekeeping or other field missions fulfil the condition of one-year qualifying service before becoming eligible to be considered for internal vacancies in the Secretariat.[4] This provision was clarified and amended by paragraph 2 of section V of resolution 52/219 in which the Assembly decided:

> "... that persons eligible to be considered for internal vacancies within the Secretariat after twelve months of service, as provided for in paragraph 27 of section III.B of resolution 51/226, shall be staff appointed in the Professional category and above under the 100 or 300 series of the Staff Rules to serve against peacekeeping support account posts at Headquarters or in peacekeeping or other field missions, and decides further that such eligibility shall be limited to vacant posts at the P-4 level and above."

The Secretariat is mindful of the fact that the above provision was drafted for the specific purpose of omitting 200 series project personnel from its scope, thus not allowing them to become eligible to apply for internal vacancies in the Secretariat after one year of service in the field. Therefore, applying the *Balogun* judgement to 200 series project personnel, even for posts at the P-4 level and above, would appear inconsistent with the letter and the intent of the resolution. So would application of the judgement to staff members serving under the 100 and 300 series of the Staff Rules, including those identified in resolution 52/219, since the judgement links eligibility to the fact that a person is a staff member, without requiring any qualifying period of prior service.

Issues related to the application of the system of desirable ranges

10. In paragraph 2 of section III.B of resolution 51/226, the General Assembly recognized the system of desirable ranges as the mechanism for the recruitment of staff in posts subject to geographical distribution, in accordance with Article 101, paragraph 3, of the Charter of the United Nations. The importance given by the Tribunal to the fact that all staff members already in the service of the Organization share the same legal obligations and should therefore benefit from the same rights (para. III of the judgement, reproduced in annex I) could seriously undermine the system of desirable ranges. Using the Tribunal's language, nationals of over-represented countries previously recruited outside the system of desirable ranges – and therefore considered as "external" candidates – could object to the application of the restrictions inherent in that system once they have been allowed to apply for a post, because such considerations are not taken into account in respect of "internal" candidates who, by definition, were previously recruited under the system of desirable ranges. This could negate the strenuous efforts made over the years at the time of recruitment to ensure equitable representation of all Member States. This would also run contrary to Action 18 of the Secretary-General's Programme for Reform, which aims at

[4] Paragraph 27 of section III.B of resolution 51/226 requested the Secretary-General "to ensure that persons serving in peacekeeping or other field missions become eligible for consideration for internal vacancies in the Secretariat *after having served for at least twelve months*" (emphasis added).

attaining significant progress on geographical and gender representation, with an early goal of having all Member States represented no later than 1999 (A/51/950, para. 233).

11. One way to ensure compliance with the desirable ranges in the long term would be to require all international staff to be recruited under the desirable ranges system, which at present applies only to 100 series staff appointed for a year or longer (unless the appointment is limited to a particular mission, office or programme, or is financed by the peacekeeping support account, as mandated by paragraph 13 of section III.B of resolution 51/226). This, however, would unduly limit the present ability of the Organization to select experts for service under the 200 series on the basis of individual expertise with respect to particular development projects. Moreover, the system of desirable ranges is fairly rigid and time consuming to administer and does not allow for the speed and flexibility required for mission staff, who must in some cases be recruited on a few days' notice. Finally, use of that system in recruiting temporary staff for periods of less than one year would be impracticable, as well as misleading if such temporary staff were added to those recruited on a longer-term basis when comparing the actual geographical distribution of staff with the desirable ranges for each Member State.

Issues related to the role and functions of the appointment and promotion bodies

12. In order to put into effect its interpretation of staff regulation 4.4, the Tribunal indicated that the appointment and promotion bodies should be perfectly capable of considering all the applicants generated by removing the restrictions inherent to the circulation of "internal vacancies". Those bodies would review the applications and determine the best qualified candidate, after evaluating performance records and administering any test they would consider appropriate (para. VI of the judgement, reproduced in annex I). Under such a system, the appointment and promotion bodies would assume vastly expanded functions of a very different nature than is the case at present. Instead of ensuring that candidates are selected in accordance with all applicable standards and policies, rules and procedures, the appointment and promotion bodies would become responsible for assessing the substantive merits of the candidates through any means they consider appropriate, including the administration of tests to the applicants. In other words, an advisory body, which may not have the substantive technical knowledge required to assess candidates in a number of areas and is not responsible or accountable for programme delivery, would be charged with a substantive review of the candidates and would in effect select staff through whom programme managers would have to deliver – or attempt to deliver – their respective programmes. This new layer of review would not only add substantial delays but could lead to the introduction of a mechanism parallel to the test and examination system administered by the Office of Human Resources Management. All this would be completely at odds with the Secretary-General's reform and his determination to move away from the situation where delivery of mandated programmes is "hampered by excessive bureaucratic procedures and rules, with responsibility for management of resources in the hands of administrators who have no accountability for programme delivery".[5]

[5] *Renewing the United Nations: A Programme for Reform*, A/51/950, para. 236.

Issues related to the distinction between career and non-career staff

13. A broad application of the judgement would do away with one essential element of the distinction which now exists between career and non-career staff. As explained in a prior report of the Secretary-General, the evolution that has taken place over the years has blurred the distinction previously made on the basis of the type of appointment (probationary, permanent or indefinite on the one hand, all other appointments on the other).[6] The only remaining criterion is the series of the Staff Rules under which staff are appointed. Under staff rule 200.1, project personnel are appointed under the 200 series for technical assistance projects, which, by definition, are not part of the continuing essential functions of the Organization calling for a core of career staff.[7] Under staff rule 300.1, the 300 series is applicable to staff members who are: (a) specifically engaged on short-term appointments for conference and other short-term service for a period not exceeding six consecutive months, or (b) specifically recruited on appointments of limited duration. The time limitation, which is the essential characteristic of the 300 series, also by definition excludes the possibility of a career within the Organization. Allowing 200 and 300 series staff to compete on an equal footing with staff appointed under the established procedures of the 100 series for posts to be filled by a 100 series staff member would remove an essential element of the existing distinction between career and non-career staff and undermine the concept of career service, which implies a finite population of staff already "in the system" who can perfect their skills and acquire new ones by availing themselves of learning and development opportunities, thus readying themselves for new assignments and new challenges. All these matters raise fundamental questions of human resources policies, which will be considered in the context of the Secretary-General's report on human resources management to be submitted to the fifty-third session of the General Assembly.

Options for legislative action

14. Set out below are several options for legislative action which the General Assembly may wish to consider:

(a) The General Assembly could accept the Tribunal's interpretation of staff regulation 4.4 by taking note of the judgement. This would make any staff member eligible to apply for any vacancy, regardless of the series of the Staff Rules under which he or she was appointed, regardless of the functions and length of prior service of the staff member (thus removing all restrictions contained in paragraph 27 of section III.B of resolution 51/226, as amended and clarified by resolution 52/219), and regardless of the requirements relating to competitive examinations, gender equality or equitable geographical distribution.

Should the General Assembly decide to select this option, it could adopt a resolution in the form set out under option A in annex II to the present report.

(b) The General Assembly could decide to amend staff regulation 4.4 in order to maintain and clarify policies of human resources management introduced and developed on the basis of prior resolutions, which are aimed at ensuring compliance with the highest standards of efficiency, competence and integrity, as well as the requirements of equitable geographical distribution and gender equality and on the basis of which career progression

[6] *Ratio between career and fixed-term appointments*, A/C.5/51/34, of 22 November 1996, paras. 5-13.

[7] See annex to document A/C.5/51/34, where the objectives followed by the Organization over the years on the question of career versus non-career appointments are set out.

is made available to staff previously appointed under the 100 series of the Staff Rules for a year or longer through the established mechanisms.

Should this option be selected, the General Assembly may wish to consider the suggested amendment to staff regulation 4.4 set out under option B in annex II to the present report.

Annex I

Summary of United Nations Administrative Tribunal judgement No. 852, *Balogun* (1997)

1. In the *Balogun* judgement, the issue was the validity of the Administration's refusal to consider an individual who had been appointed under the 200 series of the Staff Rules eligible to apply for a vacant P-5 post which had been circulated internally.

2. The Tribunal found that staff regulation 4.4 was the legal rule applicable in the case. Staff regulation 4.4 provides:

> "Subject to the provisions of Article 101, paragraph 3, of the Charter, and without prejudice to the recruitment of fresh talent at all levels, the fullest regard shall be had, in filling vacancies, to the requisite qualifications and experience of persons already in the service of the United Nations. This consideration shall also apply, on a reciprocal basis, to the specialized agencies brought into relationship with the United Nations."

The Tribunal noted, in paragraph III of the judgment, that staff regulation 4.4 did not mention the words "internal service" or "internal candidates" and that the interpretation of the regulation could not turn on such concepts. It found that:

> "... the important concept here is that the fullest regard should be given to the 'requisite qualifications and experience' of those people '*already in the service of the United Nations*' (emphasis added by the Tribunal). The Tribunal is of the view that the words 'already in the service of the United Nations', when given their natural and ordinary meaning, include those persons recruited under the 200 series, who are employed in the exclusive service of the Organization who have taken an oath to the Organization and whose Letters of Appointment oblige them to abide by the terms and conditions of the Staff Regulations and Rules. All these staff members, who would not include those serving the Organization on consultancy agreements since they do not fulfil the conditions specified above, share the same legal obligations towards the Organization and should therefore benefit from the same rights."

3. The Tribunal also expressed its belief that, in order to secure the "highest standards" required by the Charter, it was necessary that the appointment and promotion bodies be given the widest possibility of choice among staff members (para. IV of the judgement). The Tribunal considered that, the more restrictive the interpretation given by the appointment and promotion bodies to what they term "internal service", the more likely there was to be an infringement of staff regulation 4.4, in the light of Articles 8 and 101 of the Charter (para. V of the judgement). With respect to the argument that the conditions for employment under the 200 series are less stringent than for 100 series employment, the Tribunal expressed the view, in paragraph VI of the judgement, that the paramount consideration in the process of selecting candidates for posts is their capacity to perform the tasks at issue and that:

> "The appointment and promotion bodies should be perfectly capable, by reviewing an applicant's performance history and evaluations *as well as administering any tests they consider appropriate*, of determining which candidate possesses the best qualifications for the post in question, notwithstanding the series of the Staff Rules under which the candidate was appointed." (emphasis added)

4. With respect to competitive examinations, the Tribunal noted, in paragraph VII of the judgement, that:

"... 100 series appointments are, for posts above the P-3 level, open to external candidates who have not passed any kind of competitive examination. If these 100 series staff have not passed a competitive examination, they are, by the Respondent's own logic, no different from 200 series staff applying for the same posts."

5. In paragraph VIII of the judgement, the Tribunal concluded that:

"... limiting recruitment for 'internal' vacancies to staff holding 100 series appointments, thereby excluding from consideration staff serving under the 200 series, may not be in the best interests of the United Nations, as this would limit the Organization's ability to fill the vacancies with the most qualified personnel. The fact that 200 series staff members do not, when they enter the service of the United Nations, have an expectation of a career within their own branch of service does not necessarily deprive them of the legitimate expectation, under Articles 8 and 101 of the Charter, of a career serving the United Nations on the strength of their 'qualifications and experience', as mandated by staff regulation 4.4."

Annex II

Option A: Acceptance of elimination of any distinction between internal and external candidates among staff members

"*The General Assembly*

"1. *Takes note* of the decision of the United Nations Administrative Tribunal in judgement No. 852, *Balogun*;

"2. *Accepts* the principle that there will be no distinction in the future between internal and external candidates for vacancies to be filled by staff members appointed for one year or longer under the 100 series of the Staff Rules."

Option B: Amendment to staff regulation 4.4

"*The General Assembly*

"1. *Takes note* of the decision of the United Nations Administrative Tribunal in judgement No. 852, *Balogun*;

"2. *Decides* that the Secretary-General may continue to restrict eligibility to apply for vacant posts to be filled by staff members appointed under the 100 series of the Staff Rules to internal candidates previously appointed under that series for one year or longer under established procedures designed to ensure that those candidates meet the highest standards of efficiency, competence and integrity, and that they fulfil the requirements of equitable geographical distribution and gender equality. Other staff members may be allowed to apply for such vacancies only after it has been determined that no internal candidate meets the requirements of the post;

"3. *Also decides* to amend staff regulation 4.4 by adding the following sentence to the present text of that regulation:

> The Secretary-General may limit eligibility to apply for vacant posts to be filled by staff members appointed for one year or longer under the 100 series of the Staff Rules to internal candidates, as defined by the Secretary-General. If so, other candidates shall be allowed to apply, under conditions to be defined by the Secretary-General, when no internal candidate meets the requirements of Article 101, paragraph 3, of the Charter as well as the requirements of the post.

Should the General Assembly decide to amend staff regulation 4.4 as indicated above, the Secretary-General would promulgate the following staff rule:

Rule 104.11

Internal candidates and internal vacancies

For the purpose of staff regulation 4.4, the expression "internal candidates" means staff members previously recruited under rules 104.14 and 104.15. Vacancies for which eligibility to apply is restricted to such internal candidates shall be referred to as "internal vacancies". The conditions under which persons other than internal candidates may apply for vacancies shall be defined by the Secretary-General.

Explanatory notes

Staff rule 104.14 requires that appointments of one year or longer under the 100 series be considered by one or more appointment and promotion bodies, which review compliance with the requirements of all applicable standards, rules and policies, including the requirements of equitable geographical distribution and gender equality. Staff rule 104.15 regulates the procedure to be followed for appointments by competitive examination; national competitive recruitment examinations are administered only to nationals of countries which are unrepresented, under-represented or below their mid-point range.

The conditions under which candidates other than "internal candidates", as defined in proposed staff rule 104.11 and under prior Secretariat practice, could apply for vacant posts are already set out in ST/AI/1997/7, Recruitment procedures for Professional staff, as amended by ST/AI/1998/5, and in ST/AI/412, Special measures for the achievement of gender equality.